

REMARKS

This amendment is submitted to be fully responsive to the Office Action detailed in Paper No. 080505. Claims 1-18 remain pending in the application.

The current status of the claims is as follows: Claim 11 is objected to for recitation of a limitation in regard to "said frame" whereas the claim should properly read with regard to "said funnel." Appropriate correction has been made and reconsideration of the claim objection is therefore requested. Claims 1-3, 7, 9 and 12 stand rejected under 35 U.S.C. §102(b) as anticipated by Starks (U.S. Patent No. 1,500,964). Claim 3 has been amended to further define a polygonal base as being higher than four sided. Support for this limitation is found in the specification as filed at page 3, lines 12-13. As such, it is submitted that no new matter has been added to the application by way of this amendment. Claims 4, 8 and 13 stand rejected under 35 U.S.C. §103(a) over Starks. Claims 17 and 18 stand rejected under 35 U.S.C. §103(a) over Starks in view of Alfonso (U.S. Patent No. 4,138,139). Lastly, claims 5, 6, 10, 11 and 14-16 are noted to include allowable subject matter but are objected to based on dependency from a rejected base claim. In response to this objection, claims 5 and 10 have been redrafted in independent form thereby placing claims 5, 6, 10, 11 and 14-16 in allowable form.

Remarks Directed to Rejection of Claims 1-3, 7, 9 and 12 under 35 U.S.C. §102(b) over Starks

It is a well-established tenet of patent law that for a reference to be anticipatory, all of the claimed elements must be found within a single reference and arranged as per the claim.

Starks is cited as teaching "a polygonal funnel (7) of unitary construct hingeably secured (see figure below [sole figure of Starks]) to at least one of said plurality of vertical supports

having a mouth greater than the bag opening size.” (Paper No. 080505, section 3, paragraph spanning pages 2-3).

Applicant submits that Starks fails to anticipate the pending claims on the basis that Starks is deficient as to claim 1 with regard to “a funnel hingeably secured to at least one of said plurality of vertical supports.”

Starks at lines 47-52 states and clearly shows with respect to the sole patent figure that the hinge pins upon which the trough 7 of Starks pivots engage horizontal “sides of the frame 1” (line 48). As such, Applicant submits that Starks is deficient in failing to recite the claimed relationship between the funnel and at least one of the vertical supports. Rather, a horizontal side piece has been equated to securement to a vertical support. The links 9 and the coil spring depicted in Starks that are anchored to a vertical support are submitted to represent a mere counterbalance function and do not detract from Applicant’s identification that the hinge pins of Starks are mounted to a horizontal and not a vertical support as required by claim 1.

With respect to claim 2, while Applicant concedes that Starks teaches a rectilinear base, nowhere does Starks teach or contemplate a square base. With regard to claim 3, again, while Starks teaches a rectilinear base, a circular, triangular, or higher than four-sided polygonal base is nowhere taught nor contemplated. With regard to claim 9, again, while Starks teaches a rectilinear base, a circular, triangular, or higher than four-sided polygonal base is nowhere taught nor contemplated.

In light of the above remarks, reconsideration and withdrawal of the rejection as to claims 1-3, 7, 9 and 12 under 35 U.S.C. §102(b) as anticipated by Starks is requested.

**Remarks Directed to Rejection of
Claims 4, 8 and 13 under 35 U.S.C. §103(a) over Starks**

With regard to claims 4 and 8, Starks is noted as failing to teach “a base having an open side (per claim 4) or a funnel being hexagonal (per claim 8)” and that it would:

have been obvious to one of ordinary skill in the art at the time the invention was made to modify the base and the funnel to be various shapes including open sided and hexagonal since it has been held that a change in the shape of a prior art device is a design consideration within the skill of the art.

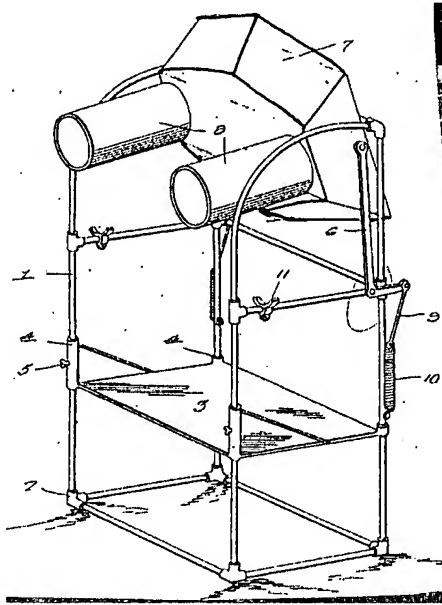
(Paper No. 080505, section 5, page 4, first paragraph).

In addition to claims 4 and 8 being allowable on the basis of dependency from claim 1, now believed to be in allowable form, Applicant submits that the claimed recitation as to base and funnel each afford functional benefits that constitute a surprising result over the art of record.

An open base as recited per claim 4 allows an inventive assembly to be maneuvered into position to envelope a stationary yard waste bag as opposed to the requirement of Starks that the bag be brought into position relative to a stationary sacking device. As a yard waste bag is potentially both heavy and susceptible to bottom tear out, the ability to use a base in a spatula-like manner such that the bag does not have to be dragged over a tubular member affords a considerable functional advantage nowhere taught or contemplated in Starks.

With regard to a hexagonal funnel per claim 8, assuming for argument's sake one were to replace the trough (7) of Starks with a hexagonal variant, Applicant submits that rotatably mounting such a funnel of hexagonal shape necessarily would yield an angled section extending both forward and rearward per the following figure. The frontward facing angled section is submitted to represent a potential source of danger as the sharp angled section would move downward and extends beyond the frame while the corresponding rearward pointing angled

portion would necessarily contact the rear horizontal side support and necessitate modification or removal of this member. This hypothetical device construct is depicted below.



As such, it is submitted that one of ordinary skill in the art would lack a motivation to replace the trough of Starks with a hexagonal funnel according to the present invention that creates a safety hazard, increases the effective footprint of the device, and requires modification of the rear horizontal support member since such modification appears to offer no tangible advantage to the apparatus of Starks. In contrast, the hexagonal funnel of the present invention represents the optimal balance between maximizing funnel cross-sectional area, strength, and ease of joinder to angular piping components.

In light of the above remarks, reconsideration and withdrawal of the rejection as to claims 4, 8 and 13 under 35 U.S.C. §103(a) over Starks is requested.

**Remarks Directed to Rejection of Claims 17 and 18
under 35 U.S.C. §103(a) over Starks in View of Alfonso**

Starks is cited as being deficient with regard to teaching the rotatably secured wheel and a screen back support secured to the base. Alfonso is cited to bolster the teaching of Starks in both these regards. (Paper No. 080505, section 7, pages 4-5).

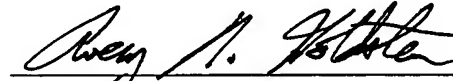
Applicant requests reconsideration and allowance of claims 17 and 18 on the basis of dependency from base claim 1 as claim 1 is now believed to be in allowable form.

Summary

Claims 1-18 remain pending in the application. The potential allowability of claims 5, 6, 10, 11 and 14-16 is noted with appreciation. Reconsideration and allowance of the pending

claims is solicited. Should the Examiner find to the contrary, he is respectfully requested to contact the undersigned attorney in charge of this application to resolve any remaining issues.

Respectfully submitted,



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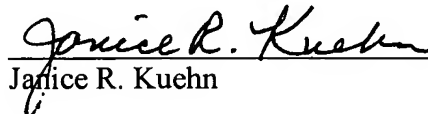
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